

CHAPTER 20 OFFICE OF THE PEOPLE'S COUNSEL AGENCY FUND

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2000 GENERAL PROVISIONS

- 2000.1 The purpose of this chapter shall be to implement the Utility Regulatory Assessment Clarification Act of 1984, D.C. Law 5-153, as required by §3(e)(5), by providing procedural and substantive rules governing determinations by the Office of the People's Council (the "Office") of the need for deposits to the People's Counsel Agency Fund ("Agency Fund") and requests for the issuance of special franchise tax deposit orders by the Public Service Commission (the "Commission") pursuant to D.C. Code §43-612(a)(5) (1981 Ed.).
- 2000.2 This chapter shall provide for full disclosure of any determination and deposit order request by the Office prior to the issuance of an Order by the Commission directing a public utility to deposit funds into the Agency Fund.
- 2000.3 This chapter shall govern the procedures by which the Office shall determine reasonable and necessary expenditures for a proceeding as set for in D.C. Law 5-153, for purposes of requesting a Commission order directing a deposit into the Agency Fund by an affected utility to pay the expenses associated with such determined needs.
- 2000.4 For the purposes of D.C. Law 5-153 and except as provided in §2000.6 of this chapter, the People's Counsel is the person authorized to determine the resource requirements of the Office, and to issue a Notice of Agency Fund Requirements and proposed order to the Commission on behalf of the Office.
- 2000.5 In the absence of the People's Counsel, the Deputy People's Counsel is authorized to perform any function or duty prescribed in this chapter to be performed by the People's Counsel, except whenever the Deputy People's Counsel has served, or is serving, as Case Manager with respect to the matter which is the subject of the Notice of Agency Fund Requirements.

- 2000.6 Functions or duties prescribed in this chapter to be performed by the Agency Administrator or the Case Manager may be delegated to their respective subordinate employees with the written approval of the People's Counsel.

AUTHORITY: Unless otherwise noted, the authority for this chapter is Paragraph 42(a)(1) of An Act Making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen and for other purposes, approved March 4, 1913; as amended by §3 of the Utility Regulatory Assessment Clarification Act of 1984, D.C. Law 5-153, D.C. Code §43-612 (1981 Ed.).

SOURCE: Final Rulemaking published at 32 DCR 5615 (October 4, 1985).

2001 DETERMINATION OF REASONABLE AND NECESSARY EXPENDITURES

- 2001.1 When any proceeding is initiated, the Office shall, from time to time and prior to issuing a Notice of Agency Fund Requirements to the Commission, determine the reasonable and necessary expenditures required to fully carry out its statutory duties, consistent with the procedures set forth in this chapter.

- 2001.2 The Case Manager shall identify and define the need for resources, and in so doing shall take into account the following factors:

- (a) The nature of the proceeding;
- (b) The number, scope, and complexity of the issues;
- (c) The time and labor required;
- (d) Time limitations imposed by the client or the circumstances;
- (e) The expertise, reputation, and ability of the contractor;
- (f) The quality of the contractor's work;
- (g) The customary expenditures required for services in comparable proceedings;
- (h) The potential effect of the proceeding on District ratepayers in terms of cost, regulatory policy, socioeconomic impact, or precedent;
- (i) The existence of other pending litigation and other proceedings which may have a direct or indirect impact on the proceeding in question; and
- (j) Any other factors which reasonably affect the resources required.

- 2001.3 Whenever the Case Manager concludes that resources are required that necessitate the preparation of a recommended determination of Agency Fund requirements, he or she shall submit to the Agency Administrator a written statement of need which shall be made a part of the official record and which shall include the following information:

- (a) The number and type of contractors needed;

- (b) The names of the contractors required, noting the category of services to be prodded and the matters to be addressed by each contractor; and
 - (c) A narrative, based upon the considerations required in §2001.2, supporting the need for the resources requested.
- 2001.4 Whenever the Agency Administrator receives a written statement of need from the Case Manager under §2001.3, the Agency Administrator shall prepare a recommended determination of Agency Fund requirements and a proposed Commission order based upon the resource requirements identified and defined by the Case Manager, including the following:
 - (a) The amount sought from the affected utility and the date(s) on which payment is requested to be made by the utility;
 - (b) The name of each contractor to be hired, accompanied by a brief description of their qualifications;
 - (c) The contract negotiated with each contractor, indicating the following:
 - (1) A brief description of the work to be performed and the matters assigned;
 - (2) The number of persons employed under the contract by each contractor and the hourly rate to be charged by such persons; and
 - (3) The actual or estimated contract ceiling of each contract; and
 - (d) A statement based upon the narrative submitted by the Case Manager under §2001.3(c) justifying the necessity and reasonableness of the expenditures.
- 2001.5 Prior to submitting a recommended determination and proposed order to the People's Counsel, the Agency Administrator shall do the following:
 - (a) Hand-deliver a copy of all the materials listed in §2001.4 to the affected utility for review and comment; and
 - (b) Respond to any formal opposition in writing by either modifying the recommended determination and proposed order, or setting forth with particularity the reasons for denying or rejecting the opposition raised.
- 2001.6 Whenever an affected utility does not file a timely opposition, the Agency Administrator shall forward the recommended determination and proposed order, a draft cover letter to the Commission, and the official written record to the People's Counsel within six (6) business days of the date on which the determination was submitted to the affected utility.
- 2001.7 Whenever the affected utility does file a timely opposition, the Agency Administrator shall forward the recommended determination and the official record to the People's Counsel within nine (9) business days of the date on which the recommended determination was submitted to the affected utility.

2001.8 The Agency Administrator shall, upon submission of a recommended determination to the People's Counsel, certify as to the accuracy and completeness of the record submitted.

2001.9 The Agency Administrator shall, on the same date, provide to the affected utility the recommended determination which was submitted to the People's Counsel.

SOURCE: Final Rulemaking published at 32 DCR 5616 (October 4, 1985).

2002 UTILITY OPPOSITION

2002.1 Any affected utility shall have five (5) business days, exclusive of the date on which the material is received, within which to file an opposition or comments to the recommended determination and proposed order provided by the Agency Administrator.

2002.2 Comments or oppositions shall be in writing and may be based on, but are not limited to, the following grounds:

- (a) Whether the rate of compensation for any contractor is unreasonable;
- (b) Whether the work to be performed by any contractor is not reasonably connected to the proceeding; and
- (c) Whether the total amount requested by the Office exceeds the statutory millage limit.

2002.3 No opposition shall be considered if it serves merely to substitute the judgment of the affected utility for that of the Office with regard to the matter in question or the litigation strategy of the Office.

2002.4 The affected utility shall have the burden of demonstrating the validity of any opposition raised.

2002.5 Any opposition timely filed by an affected utility shall be made part of the official record.

SOURCE: Final Rulemaking published at 32 DCR 5619 (October 4, 1985).

2003 DETERMINATION OF AGENCY FUND REQUIREMENTS

2003.1 Whenever the People's Counsel receives a recommended determination and proposed order from the Agency Administrator, the People's Counsel shall determine the reasonable and necessary expenditures of the Office based on the official record by approving or modifying the recommended determination or shall remand the recommended determination and record to the Agency Administrator with specific instructions.

2003.2 In determining the reasonable and necessary expenditures of the Office, the People's Counsel shall do the following:

- (a) Indicate the basis for the determination reached;
 - (b) Make specific findings as to any unresolved opposition filed by an affected utility; and
 - (c) Indicate the basis in the official record for the findings.
- 2003.3 Any determination of Agency Fund Requirements shall be submitted in writing, and shall set forth the following:
- (a) The reasonable and necessary expenditures of the Office requiring the issuance of a Commission order directing a deposit into the Agency Fund;
 - (b) Be supported by substantial evidence in the official record; and
 - (c) Be entitled a Notice of Agency Fund Requirements as defined in §1401.1.
- 2003.4 Whenever the People's Counsel issues a Notice of Agency Fund Requirements, he or she shall submit it with the proposed order as an official record to the Commission for issuance of an order, and on the same date, hand-deliver to the affected utility a copy of the determination, the proposed order, and an index of the official record.
- 2003.5 A Notice of Agency Fund Requirements and proposed order shall be submitted to the Commission prior to the expiration of the period for filing an appeal or petition for reconsideration of a final order or decision in the proceeding.

SOURCE: Final Rulemaking published at 32 DCR 5619 (October 4, 1985).

2004 OFFICIAL RECORD CONTENTS

- 2004.1 The official record compiled by the Office shall include the Case Manager's written statement of need, the Agency Administrator's recommended determination as submitted to the affected utility, written oppositions or comments submitted by any affected utility in response to the recommended determination, the determination by People's Counsel, the proposed order, and any other documents submitted to the Commission relating to the Notice of Agency Fund Requirements.

SOURCE: Final Rulemaking published at 32 DCR 5620 (October 4, 1985).

2005 - 2009 [RESERVED]

2010 DISCLOSURE OF AGENCY FUND DEPOSIT REQUEST DATA

- 2010.1 Within two (2) business days from the day on which it is issued, the Agency Administrator shall provide for public review at least two (2) copies of any Notice of Agency Fund Requirements issued by the People's Counsel to the Commission. Each determination shall be accompanied by the respective deposit request.
- 2010.2 The Agency Administrator shall maintain for public review two (2) copies of all determinations by the People's Counsel which result in deposit requests being submitted to the Commission. The determinations shall be maintained chronologically in two (2) separate files, one (1) file by docket number, and one (1) file by affected utility.
- 2010.3 The Agency Administrator shall, upon request, provide copies (at cost) of any determinations by the People's Counsel that result in deposit requests; however, no copies will be mailed unless a stamped and self-addressed envelope is provided by the requesting party, or unless as otherwise provided herein.
- 2010.4 The Administrator shall compile and submit any reports required pursuant to D.C. Law 5-153.

SOURCE: Final Rulemaking published at 32 DCR 5621 (October 4, 1985).

2099 DEFINITIONS

- 2099.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Affected Utility - any utility, regulated by the Commission, which is a party to or participates in any proceeding.

Contractor or Independent Contractor - any person or business entity (including attorneys, expert witnesses, technical consultants, and corporations or other professional associations comprised of such professionals) which provides service to the Office, excluding any salaried staff of the Office.

Expense - any cost reasonably associated with the performance of the Office's statutory obligation (as these functions are set forth in D.C. Law 5-153) arising from any proceeding, and all costs of any litigation, including appeals, arising from such activities, or from any other order or action of the Commission. These covered costs include, but are not limited to, the cost of contractors or independent contractors.

Proceeding - any administrative action, process, adjudication, or investigation pending before, or initiated by, the Commission, any litigation including appeals arising therefrom, or any activity of the Office arising from any other order or action of the Commission pursuant to the functions and obligations set forth in D.C. Law 5-153.

SOURCE: Final Rulemaking published at 32 DCR 5621 (October 4, 1985).